

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**MELANIE SMITH GOLDWIRE,** )

**Plaintiff,** )

**v.** )

**CIVIL ACTION FILE NO.:**

**JOSEPH PERMAR;** )

**AG ENERGY TRANSPORT,** )

**LLC; AND PROTECTIVE** )

**INSURANCE COMPANY,** )

**Defendants.** )

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**NOTICE OF REMOVAL**

**TO:** Judges of the United States District Court  
Northern District of Georgia, Atlanta Division

Pursuant to 28 U.S.C. § 1441 *et seq.*, Defendants, Joseph Permar, AG Energy Transport, LLC, and Protective Insurance Company, (hereinafter “these Defendants”) hereby remove the civil action captioned *Melanie Smith Goldwire vs. Joseph Permar, AG Energy Transport, LLC, and Protective Insurance Company*, Superior Court of Richmond County, Civil Action File No. 2023RCCV00371 from the Superior Court of Richmond County, Georgia, to the United States District Court

for the Northern District of Georgia, Atlanta Division. Removal is based upon the following:

**Removal Based on Diversity Jurisdiction**

1. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. § 1332 and this matter may be removed to this Court under 28 U.S.C. §§ 1441 and 1446.

**Description of the Action**

2. On August 1, 2023, Plaintiff filed a Complaint against these Defendants alleging negligence related to a motor vehicle accident that occurred on or about September 9, 2021, in Richmond County, Georgia. *See generally*, Plaintiff's Complaint (Exhibit "A").

**Consent for Removal**

3. The procedure for removing a case to Federal Court is codified in 28 U.S.C. § 1446 and requires that "all defendants who have been properly joined and served" consent to the removal. 28 U.S.C. § 1446(b)(2)(A) (emphasis added); *Cook v. Randolph County, Ga.*, 573 F.3d 1143, 1150 (11th Cir. 2009); *Tri-Cities Newspaper, Inc. v. Tri-Cities Printing Pressmen and Assistants' Local 349*, 427 F.2d 325, 326-27 (5th Cir. 1970).

4. These Defendants consent to the removal of this Action through undersigned counsel.

5. These Defendants, which are the only defendants properly joined and served within the meaning of 28 U.S.C. § 1446, file the Notice of Removal of this Action.

**The Amount in Controversy Requirement**

6. In diversity cases, 28 U.S.C. § 1332(a) requires that the matter in controversy exceed the sum or value of \$75,000.

7. In Plaintiff's Complaint, she seeks to recover damages for personal injury including past, present, and future general and unspecified special damages. *See* Plaintiff's Complaint ¶ 24. Plaintiff's Complaint is silent as to the amount of damages sought.

8. On August 15, 2023, Plaintiff's counsel and defense counsel engaged in communication via email about the amount in controversy. In a response email, Plaintiff's counsel, Bettis Rainsford confirmed to defense counsel, Mike Hostetter, that Plaintiff will be seeking damages in excess of \$75,000 for this case. See Email Exchange (Exhibit "B").

9. Thus, the amount in controversy has been established by a preponderance of the evidence pursuant to 28 U.S.C. § 1446(c)(2)(A)-(B) as shown by the email communication by Plaintiff's counsel confirming damages in excess of \$75,000 for this case.

### **The Diversity of Citizenship Requirement**

10. For diversity jurisdiction under 28 U.S.C. § 1332(a)(1), the parties must be citizens of different states.

11. Upon information and belief, Plaintiff is a resident and citizen of the State of South Carolina and is entirely diverse from these Defendants. Plaintiff's Complaint alleges he is a resident of the State of South Carolina. *See* Plaintiff's Complaint ¶ 1. According to the police report, Plaintiff is a resident of Aiken, South Carolina. *See* Motor Vehicle Crash Report, attached as Exhibit "C". These Defendants have no information indicating Plaintiff is a citizen of any state other than Georgia.

12. Defendant, Joseph Permar is a resident and citizen of the State of North Carolina and is entirely diverse from Plaintiff. *See* Defendants' Answer ¶ 2, attached as Exhibit "D".

13. Defendant, AG Energy Transport, LLC is a limited liability company organized under the laws of Michigan and is located at 107 Main St. Buchanan, MI 49107. Therefore, Defendant, AG Energy Transport, LLC is a resident and citizen of Michigan and is entirely diverse from Plaintiff. See Defendants' Answer ¶ 3.

14. Defendant, Protective Insurance Company is an insurance carrier organized under the laws of the State of Indiana and located at 111 Congressional Blvd., Suite 500, Carmel, IN 46032. Therefore, Defendant, Protective Insurance Company is a resident and citizen of Indiana and is entirely diverse from Plaintiff. See Defendants' Answer ¶ 4.

15. Pursuant to 28 U.S.C. §1446(b)(3), "if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may be first ascertained that the case is one which is or has become removable."

16. Here, no amount was prayed for in Plaintiff's Complaint. *See generally* Complaint.

17. These Defendants have initiated removal within 30 days of receipt of a paper indicating that the amount in controversy requirement was met and the case had become removable. Based on 28 U.S.C. §1446(b)(3) this Notice of Removal is timely filed.

### **The State Court Proceeding**

18. The state court proceeding is identified as follows *Melanie Smith Goldwire vs. Joseph Permar, AG Energy Transport, LLC, and Protective Insurance Company*, Superior Court of Richmond County, Civil Action File No. 2023RCCV00371. A Notice of this Removal will be filed with the Superior Court of Richmond County upon filing of this Notice of Removal pursuant to 28 U.S.C. § 1446(d).

### **All State-Court Documents**

19. Pursuant to 28 U.S.C. § 1446(a), the following state-court filings are attached hereto: Plaintiff's Complaint (Exhibit "A"); Defendants' Answer to Plaintiff's Complaint (Exhibit "D"); Summons to Defendant, Joseph Permar (Exhibit "E"); Summons to Defendant, AG Energy Transport, LLC (Exhibit "F"); Acknowledgement of Service by Defendants (Exhibit "G"), and Plaintiff's Affidavit of Compliance of Service of Process Upon Non-Resident Motorists ("Exhibit H").

Written discovery requests served by Plaintiff have not been attached for the sake of brevity.

**WHEREFORE**, these Defendants exercise their right under the provisions of 28 U.S.C. § 1441, *et seq.* to remove this action from the Superior Court of Richmond County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 7th day of September, 2023.

**NALL & MILLER, LLP**

BY: 

**MICHAEL D. HOSTETTER**

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***Attorney(s) for Joseph Permar, AG Energy  
Transport, LLC, and Protective Insurance  
Company***

**CERTIFICATE OF COMPLIANCE WITH N.D. GA. LOCAL RULE 5.1B**

This is to certify that this pleading was created in Times New Roman 14-point font in accordance with Northern District of Georgia Local Rule 5.1B.

This 7th day of September, 2023.

**NALL & MILLER, LLP**

BY: 

**MICHAEL D. HOSTETTER**

Georgia State Bar No.: 368420

**LASHAWNDA M. SAMPSON**

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***Attorney(s) for Joseph Permar, AG Energy  
Transport, LLC, and Protective Insurance  
Company***



**CERTIFICATE OF SERVICE**

I hereby certify that I have on this day filed the within and foregoing **NOTICE OF REMOVAL (Federal)** with the Clerk of Court in this matter and served a true copy of same via electronic service.

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*Counsel for Plaintiff*

This 7th day of September, 2023.

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